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November 21, 2016

VIA ECF

Honorable Michael A. Hammer, U.S.M.J.
United States District Court
District of New Jersey
M.L. King Jr. Federal Bldg. & Courthouse
50 Walnut Street, 2nd Floor
Newark, NJ 07102

Re: HUMC OPCO, LLC d/b/a CarePoint Health – Hoboken University Medical Center v. United Benefit Fund, Aetna Health Inc., and Omni Administrators Inc.
Civ. Action No. 2:16-CV-00168(KM)(MAH)

Dear Judge Hammer:

Please accept this joint letter on behalf of plaintiff HUMC OPCO, LLC d/b/a CarePoint Health – Hoboken University Medical Center (“HUMC” or “Plaintiff”), and defendants United Benefit Fund (“UBF”), Aetna Health, Inc. (“Aetna”), and Omni Administrators, Inc. (“Omni”) (collectively, “Defendants”) in advance of our telephone status conference scheduled for November 28, 2016, at 2:00 p.m.. We write to provide Your Honor with an update regarding the status of discovery pending the Court’s disposition of the several motions to dismiss. As Your Honor is aware, as directed in Your Honor’s Order dated May 5, 2016, discovery was initially limited to production of the administrative record and the question of the grandfathered status *vel non* of the plan at issue.¹

As UBF advised the Court and the parties at the status conference of June 14, 2016, UBF originally believed that the Plan’s grandfathered status could be established by virtue of its collectively bargained status as well as by virtue of the absence of any changes in the Plan or the funding that would result in the loss of grandfathered status under the ACA. While Plaintiff sent notice of its intent to take third party discovery concerning the collective bargaining agreement identified by UBF, prior to any such discovery being taken, UBF determined that it could not rely upon any collective bargaining agreement for grandfathered status. UBF so advised Plaintiff in its responses to Plaintiff’s document requests. As a result of UBF’s responses, Plaintiff has sought additional documents from UBF concerning the alternative bases for grandfathered status under ACA regulation 45 CFR 147.140 and requested that UBF identify a deponent for purposes of a Fed. R. Civ. P. 30 (b) (6) deposition on the topic of the Plan’s alleged grandfathered status.

¹ Defendant Omni has not participated in the discovery issues discussed in this letter and takes no position on the issues discussed herein.

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As UBF can no longer rely upon its collectively bargained status, UBF acknowledges that it must produce additional documents concerning the alternative bases for grandfathered status, in particular documents concerning the Plan's error in effecting co-payment increases and the measures it took to rectify the error. UBF has also agreed to present its principal, David De Lucia, for a Rule 30 (b) (6) deposition to be conducted the week of December 12 and to produce the relevant documents reasonably in advance of the deposition.

The parties have significant legal disputes concerning the meaning of the alternative bases for grandfathered status and their application to the facts of this case that are likely to entail discovery from HUMC as well as additional discovery from UBF. The parties will be better able to address the need for additional discovery from each other concerning UBF's grandfathered status *vel non*, (including the consequences of grandfathered vs non grandfathered status, after UBF has appeared for the Rule 30 (b) (6) deposition, and the parties reserve all of their respective rights in this regard.

As Your Honor is aware, pursuant to the Court's initial Scheduling Order of May 5, 2016, the parties have not scheduled other discovery. Upon determination of the previously filed motions to dismiss, all parties will be better equipped to address discovery issues beyond those concerning the Plan's alleged grandfathered status.

All parties look forward to answering any questions Your Honor may have at our status conference on Monday.

Respectfully Submitted,

/s/ Anthony P. La Rocco

Anthony P. La Rocco

cc: All Counsel of Record (via ECF)